LIBEL AND SLANDER—WORDS ACTIONABLE—ALLEGATIONS IN PLEADING.—CARPENTER V. GRIMES PASS MINING CO., 114 PAC., 42 (IDAHO).—*Held,* that the ends of justice and the public good can be best served by allowing litigants to freely plead any material matter in a judicial proceeding to which they are parties, holding them accountable only for defamatory matter which is neither pertinent nor material to the issue under inquiry.

The weight of authority supports the proposition laid down in the principal case. *Dunn v. Southern Ins. Co.,* 116 La. 431; *McGehee v. Insurance Co.,* 112 Fed., 853; *Kemper v. Fort,* 219 Pa. 85. This rule applies also to words spoken by counsel during the course of the trial; *Maulsby v. Reifsnider,* 69 Md., 143; *White v. Carroll,* 42 N. Y., 161; and to remarks of a complainant who is conducting a prosecution before a justice of the peâce in behalf of the Commonwealth. *Hoar v. Wood,* 3 Metc. (Mass.), 193. In England, statements made during a trial are absolutely privileged, regardless of their relevancy. *Munster v. Lamb,* 11 Q. B. D., 588; *Scott v. Stansfield,* L. R. 3, Ex. 220. But in America, when the words are not pertinent and material, the rule of protection does not apply. *Moore v. Nat'l. Bank,* 123 N. Y., 420; *King v. McKissick,* 126 Fed., 215. A mere averment that the statements were false and malicious, without alleging that they were not pertinent and material, is insufficient. *Harting v. Shaw,* 130 Mich., 177. Defendant may show that he believed in good faith that they were pertinent and material, and thus rebut the presumption of malice. *Burdette v. Argile,* 94 Ill., App. 171. But where the statements were clearly impertinent, defendant cannot justify by showing his belief that they were true. *McGlaughlin v. Cowley,* 127 Mass., 316. The cardinal inquiry is whether the matter was pertinent to the issue involved. *Crockett v. McLanahan,* 109 Tenn. 517. This is a question of law for the court. *Harlow v. Carroll,* 6 App. D. C., 128; *Jones v. Brownlee,* 161 Mo., 258. In Louisiana, it has been held that defamatory judicial allegations are not libelous and actionable, unless shown to have been false, malicious, and without probable cause. *Lescale v. Schwarz,* 118 La., 718. When libelous matter is contained in pleadings prepared by an attorney, it will be presumed, until the contrary is shown, that his client authorized the act. *Insurance Co. v. Thomas,* 83 Fed., 803. The privilege given by this rule applies only to publication during the trial; hence a newspaper which wrongfully publishes a slanderous account of a judicial proceeding is liable. *Park v. Free Press Co.,* 72 Mich., 560.

RAILROADS—INJURIES TO TREPASSERS—USE OF RIGHT OF WAY.—SOUTHERN RY. CO. V. WILEY, 70 S. E., 510 (VA.).—*Held,* that where railroad tracks have long been used as a pathway with the knowledge and acquiescence of the company, it was bound to keep a reasonable lookout for persons upon the track.

A person who, without permission, walks upon the tracks of a railroad company, is a trespasser, though the portion of the track where he walks is habitually used by pedestrians. *Eggmann v. St. Louis, A. & T. H. R. Co.,* 47 Ill., App. 507. Nor does the mere acquiescence on the part of a company in the use of its track by the public confer any right to use the same. *Wilmurth's Adm'r. v. Ill. Cent. R. Co.,* 25 Ky. Law Rep., 671. But

in some jurisdictions if the use of the tracks continues habitually, with the company's knowledge and without its objection, it is sufficient to constitute the person so using it a licensee. *Minot v. Boston, etc., R. Co.*, 74 N. H., 230; *Swift v. Staten Island Rapid Transit R. Co.*, 123 N. Y., 645. And in respect to trespassers on the track of the company the weight of authority holds that there is no positive duty owing them. *Terre Haute, etc., R. Co. v. Graham*, 95 Ind., 286; *contra, Carter v. Columbia, etc., R. Co.*, 19 S. C., 20. In some jurisdictions the English rule is adopted, that the company is not liable except, after becoming aware of the party's danger, reasonable care was not exercised to prevent injury. *Louisville, etc., R. Co. v. Black*, 89 Ala., 313; *Burnett v. Burlington, etc., R. Co.*, 16 Neb., 332. And the general rule is that a railroad company is not bound to keep a lookout for trespassers. *Terre Haute, etc., R. Co. v. Graham*, 95 Ind., 286; *Mobile, etc., R. Co. v. Stroud*, 64 Miss., 784. In most jurisdictions, in accordance with the principal case, the company is under the duty of using reasonable care to discover and avoid injuring trespassers whom it has reason to anticipate may be on the tracks. *Corbett v. Oregon Short Line Co.*, 25 Utah, 449; *Brown v. Boston, etc., R. Co.*, 73 N. H., 568. Other jurisdictions hold that actual knowledge must be imputed to the company in order to render the company liable for lack of reasonable care. *Cheney v. N. Y. Cent. R. Co.*, 16 Hun. (N .Y.), 415; *Erie R. Co. v. McCormick*, 69 Ohio St., 45.

REFORMATION OF INSTRUMENTS—DEEDS—PARTIES ENTITLED TO SUE.—GREER V. WATSON, 54 So., 487 (ALA.).—*Held*, that a subsequent purchaser may sue to correct a mistake in the description of land made in the conveyance by the original grantor.

The rule laid down by the principal case is supported by the weight of authority. *Sicher v. Rambousek*, 193 Mo., 113; *Stewart v. Brand*, 23 Iowa, 477; *Gwyer v. Spaulding*, 33 Neb., 573; *Hill v. Clark*, 32 Ky. L. Rep., 595; *May v. Adams*, 58 Vt., 74. Where a mistake in the description of land occurs in a series of conveyances under such circumstances as would entitle any one of the vendees to a reformation as against his immediate vendor, the last vendee is entitled to a reformation against the original vendor. *Blackburn v. Randolph*, 33 Ark., 119. But the fact that the subsequent grantee has this right does not bar the first grantee from bringing the suit. *Tillis v. Smith*, 108 Ala., 264. In Colorado it is held that the right to sue for reformation of a deed cannot be transferred merely by a conveyance of the land, and that such a suit must be brought by the original grantee, unless he has expressly assigned it to another. *Norris v. Honestone Co.*, 22 Col., 162. The right of the sub-vendee to reformation of a deed will be enforced against a judgment creditor of the original grantor, and will displace the apparent lien of the judgment on the land omitted from the deed. *Willis v. Gattman*, 53 Miss., 721; *Blackburn v. Randolph, supra.* But equity will not grant such relief against one who has purchased the land in dispute from the original grantor, for value and without notice. *Willis v. Sanders*, 51 N. Y. 384. One who shows no rights under a deed has no equity to have it reformed. *Rowley v. Towsley*, 53 Mich., 329; *Gould v. Glass*, 120 Ga., 50. Hence a deed will not be